Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of		
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Lifeline and Link Up	)	WC Docket No. 03-109

COMMENTS OF
THE NEW JERSEY DIVISION OF RATE COUNSEL

Stefanie A. Brand
Director
Division of Rate Counsel
Christopher J. White
Deputy Public Advocate
P.O. Box 46005
Newark, NJ 07101
Phone (973) 648-2690
Fax (973) 624-1047
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

Economic Consultants:
Susan M. Baldwin
Sarah M. Bosley

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EXECUTIVE SUMMARY

Measures to overcome the persistent income-based barrier to broadband adoption are long overdue. The New Jersey Division of Rate Counsel ("Rate Counsel") has been a long-time advocate of the availability of broadband services at "POTS" prices, and also has been a long-time supporter of expanding the Lifeline and Link Up programs to include broadband service. Low-income households are at serious risk of being left behind as the nation increasingly relies on broadband access to the Internet for all aspects of life. States should be full-fledged partners with the Federal Communications Commission ("FCC") in efforts to achieve ubiquitous affordable broadband service for all consumers, including low-income households, and should, therefore, provide matching funds, assist with the development of any pilot programs, and assist in identifying the agencies and organizations best suited to overcome income-based barriers to broadband adoption. However, the FCC's ability to pursue its broadband agenda, including any plans to expand Lifeline and Link Up programs to encompass broadband subsidies, depends critically on re-defining broadband service as the telecommunications offering that it actually is. Absent such a reclassification, the FCC's policy and decisions are vulnerable to legal challenge. With that major caveat, Rate Counsel fully supports efforts to make broadband service affordable for all consumers, including low-income households.

The gap in adoption between higher income and lower income households has been known for many years. In 2003, 7.5 percent of households with incomes under $15,000 had broadband Internet access in comparison with 57.7% of households with incomes over

$150,000.[1] A similar income-based broadband adoption gap exists today: the probability of being without access to the Internet increases as income declines.[2] Rate Counsel reiterates the position it stated more than five years ago:

> *Provide Lifeline support for broadband services:* The existing universal service program likely requires expansion to promote broadband deployment to all households. Absent such regulatory intervention, the United States may become a two-tiered society of disparate access to and use of broadband.[3]

In 2011, although broadband access to the Internet is vastly more integral to daily economic and social life than it was five years ago, we continue to be a two-tiered society. Programs to close the affordability gap are long overdue.

Although Rate Counsel opposed the mergers themselves, Rate Counsel commends the FCC for conditioning its approval of recent mergers (the merger of CenturyLink, Inc ("CenturyLink") and Qwest Communications ("Qwest") and the merger of Comcast Corporation ("Comcast") and NBC Universal, Inc. ("NBC")) on, among other things, the applicants' commitment to deploy subsidized broadband services and computers to low-income households. Rate Counsel is hopeful that the FCC will take timely steps to ensure that *all* low-income consumers, regardless of whether they happen to reside in the Comcast or CenturyLink footprints, are able to obtain affordable broadband service. If broadband service is not affordable, it cannot be considered available. Furthermore, if it is important for Comcast's and

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1 / *In the Matter of Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Rate Counsel Initial Comments, January 17, 2006 ("Rate Counsel Consumer Protection January 2006 Initial Comments"), at 18, citing, US Dept. of Commerce, Economics and Statistics Administration, National Telecommunications and Information Administration, *A Nation Online: Entering the Broadband Age*, September 2004, Appendix Table 1.

2 / Households with incomes above $75,000 have a 93% broadband adoption rate in comparison with a 40% adoption rate by households with incomes below $20,000. *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking, rel. March 4, 2011 ("NPRM"), at para. 279.

3 / Rate Counsel Consumer Protection January 2006 Initial Comments, at 7 (emphasis in original).

CenturyLink's low-income consumers to have access to subsidized broadband services and computers, it is clearly equally important for all other consumers throughout the country similarly to have access to affordable broadband services.

Regarding voice services, Rate Counsel is not persuaded by the merits of a cap for the Lifeline/Link Up program. Consumer participation is slightly more than one-third,[4] and today's consumers (as well as those who are eligible but have not yet become participants) should not be penalized for this historically low program participation rate. There is a "disconnect" between the goal of improving outreach to increase program participation and the contrary goal of capping funds. Certainly Rate Counsel supports the elimination of waste and inefficiencies in Lifeline/Link Up and in *all* universal service programs, but it would be unwise public policy to squeeze those least able to afford to be connected to and to stay connected to the public switched network with a premature cap on funding, precisely during these tough economic times.

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4 / *NPRM*, at para. 228, cite omitted.

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COMMENTS OF
THE NEW JERSEY DIVISION OF RATE COUNSEL

I. INTRODUCTION

The New Jersey Division of Rate Counsel ("Rate Counsel") as an agency representing New Jersey consumers[5] hereby submits comments in response to the Notice of Proposed Rulemaking ("NPRM") issued by the Federal Communications Commission ("FCC" or "Commission") seeking input on proposals to "comprehensively reform and modernize" the Lifeline and Link Up programs.[6] This proceeding directly affects the ability of low-income households in New Jersey to obtain a voice connection to the public switched telephone network

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5/ Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities.

6/ *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking, rel. March 4, 2011 ("NPRM").

and a broadband connection to the Internet, as well as to maintain their voice and broadband connections.

II. PROGRAM GOALS AND PERFORMANCE MEASUREMENT

The primary goal of the Lifeline and Link Up programs is to make affordable telephone service available to low income households.[7] The Commission seeks comment on three specific goals (and performance measures related to those goals) for the Lifeline and Link Up programs.[8] The proposed goals are:

- "To preserve and advance the availability of voice service for low-income Americans";[9]
- "To ensure that low-income consumers can access supported services at just, reasonable, and affordable rates";[10] and
- "To ensure that [the FCC's] universal service policies provide Lifeline/Link Up support that is sufficient but not excessive to achieve our goals."[11]

Performance Goal Number One: Preserving and Advancing the Availability of Voice Service for Low-Income Americans.

The Commission properly recognizes "the vital role" that voice services play in the lives of consumers and American communities particularly with respect to public health and safety[12]

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7 / *NPRM*, at para. 30.

8 / *Id.*, at para. 33.

9 / *Id.*, at para. 34.

10 / *Id.*, at para. 36.

11 / *Id.*, at para. 37.

12 / *Id.*, at para. 34.

and proposes that "availability" of voice telephony be defined "to mean that low-income households have access to that service."[13] The Commission further proposes the adoption of the goal of eliminating "any difference" between the availability of voice service for low-income as compared to non-low-income consumers.[14]

The Commission proposes to adopt a target voice service subscription rate for low-income households equal to the subscription rate for households in the next higher income level as defined by the U.S. Census Bureau's Current Population Survey ("CPS"): the $35,000-$39,000 range.[15] The FCC indicates that this objective "would suggest a target rate of 96.9%" – it is unclear, however, whether the FCC intends to establish a fixed target rate of 96.9% or intends instead that the target rate for low-income households fluctuate in lockstep with the actual subscription rate of this next higher income level. Rate Counsel supports the adoption of a minimum target of 96.9%.

Measuring what the low-income subscribership rate is may be problematic. First, as the FCC acknowledges, there is no single definition of "low-income" household across the states in terms of eligibility for Lifeline service.[16] The FCC asks if, for simplicity's sake, it could use 135% of the Federal Poverty Guidelines (family of four) as the income threshold.[17] Rate Counsel recommends that the FCC mirror the LIHEAP guidelines and adopt 150% of the

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13 / *Id.* The Commission may need to define further the term "access."

14 / *Id.*

15 / *Id.*, at para. 35, citing Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Subscribership in the United States (Data through March 2010)*, rel. August 2010 ("WCB Subscribership Report"), at Table 4. The percentage of households with telephone service in their housing unit with incomes between $35,000 and $39,000 in March 2010 was 96.9%. *Id.*

16 / *NPRM*, at para. 35.

17 / *Id.*

national poverty level as the benchmark. The Commission asks for input on other measures of availability.[18] Also, the FCC asks whether it should compare the subscribership rates of low-income households with the mean or median subscribership rate for all non-low-income households (rather than simply the next highest income range).[19] It would be entirely appropriate for the FCC, in evaluating the success of the Lifeline/Link Up Programs, to compare the subscribership rate of low-income households with the mean and median subscribership rates for all non-low-income households.

Performance Goal Number Two: Ensuring Access to Supported Services by Low-Income Households at Just, Reasonable, and Affordable Rates.

The Commission proposes to adopt a second performance goal for the Lifeline and Link Up program – ensuring access by low-income households to supported services at just, reasonable, and affordable rates.[20] The Commission has previously concluded that affordability has both a relative and an absolute "component."[21] The Commission states:

> Comparing subscribership or adoption rates among low-income households to nationwide subscribership and adoption rates may be useful in evaluating whether supported services are available to low-income households and affordable in absolute terms, but those comparisons may not be dispositive in evaluating whether low-income households can afford those services in relative terms.[22]

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[18] / *Id.*

[19] / *Id.*

[20] / *Id.*, at para. 36.

[21] / *Id.*, at para. 36, citation omitted.

[22] / *Id.*

The Commission then asks whether it should compare the percentage of low-income household income that is spent on voice service to the percentage for the next highest income range.[23] Rate Counsel supports such a comparison, provided that the Commission can obtain the requisite data for the calculations without undue difficulty. The Commission should also compare the percentage of income spent on the sum of voice and broadband services: with broadband having evolved to become a virtual necessity, households must devote an increasing percentage of their disposable incomes to an ever-expanding array of communications services.

Performance Goal Number Three: Ensuring that Support for Lifeline and Link Up Is "Sufficient but not Excessive."

The Commission proposes to "ensure that our universal service policies provide Lifeline/Link Up support that is sufficient but not excessive to achieve our goals."[24] Similar to other universal service programs, the Commission must balance the goals of the program with the contribution that all consumers must make to fund the programs. Those households with limited incomes that just barely exceed the qualifying threshold for low-income subsidies particularly are burdened by high universal service surcharges. The Commission states that its proposed goal includes ensuring that support is efficient and effective and the only those that need funds receive funds.[25] The Commission seeks comment on whether it should measure the inflation-adjusted expenditure per households and determine whether it is increasing or

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23 / *Id.*, at para. 36.

24 / *Id.*, at para. 37, citing 47 U.S.C. §254(b)(5).

25 / *Id.*, at para. 37.

decreasing over time.[26] As with the Commission's other proposals, Rate Counsel fully supports the review of such information, but only if it can be obtained without undue difficulty.

The Commission refers to its request for comment on ways to address waste, fraud and abuse and suggests that "a key component" in its effort to provide sufficient, but not excessive support for Lifeline and Link Up is to guard against waste, fraud and abuse.[27] The Commission seeks comment on:

- Whether to establish an erroneous payments performance measure (thereby reducing the number of ineligible recipients to a particular percentage);[28]
- "Efficiency metrics": The Commission seeks comment generally on measures of efficiency as well as ways to "measure increases in the percentage of low-income household subscribership relative to the amount of funding spent per household receiving Lifeline/Link Up."[29]
- How to balance the goal of reducing waste with regulatory burdens on companies.[30]

Rate Counsel supports reasonable measures to reduce waste and inefficiency provided that the cost of such measures does not exceed the associated savings. Furthermore, to the

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26 / *Id.*, at para. 38. In 2010, the "per household" expenditure was $0.95 per month for the Lifeline/Link Up program. *Id.* As noted by the Commission, contributions are also made by businesses, so the actual charge that household consumers face as a result of the Lifeline/Link Up disbursements is less than the per household figure here.

27 / *NPRM*, at para. 39.

28 / *Id.*

29 / *Id.*, at para. 40.

30 / *Id.*, at para. 41.

greatest extent possible, the burden of measuring efficiency should be borne by industry rather than the FCC.

Setting priorities among the three goals and/or additional goals of Lifeline/Link Up programs.

The Commission seeks comment on whether there are additional goals that the Commission should be setting for the program as well as comments on prioritizing among the goals if there is any tension between the goals.[31] Rate Counsel urges the Commission to continue to measure and to monitor state-specific program participation rates. Subscribership is the paramount objective because it affects customers' safety.

The Commission also recognizes that it has sought comment on whether broadband should be a supported service and seeks input on whether it should adopt a performance goal of advancing broadband deployment among low-income households.[32] Rate Counsel supports the adoption of a measure, similar to that proposed for voice service, which would compare the broadband penetration rate for broadband among low-income households to the penetration rate of all households.[33] Broadband service is no longer a "luxury" service, and instead is an essential way for unemployed citizens to seek employment, children to participate fully in educational pursuits, house-bound and elderly to benefit from telemedicine, and citizens to participate fully in countless other daily work, home, civic, and school activities. Therefore, the

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31 / *Id.*, at para. 42.

32 / *Id.*, at para. 43.

33 / *Id.*

FCC should adopt as its numerical target the broadband adoption rate of the highest income bracket.[34]

III. IMMEDIATE REFORMS TO ADDRESS WASTE, FRAUD AND ABUSE

The Commission suggests that recent growth in Lifeline demand and "marketplace developments" have led to increased concerns about program waste and abuse.[35] Rate Counsel supports rules that would limit subsidies to no more than one telephone per residence,[36] improve audits, reimburse carriers for providing service only to current customers, and reduce reimbursements for unnecessary or inflated costs.[37]

Duplicate claims.

The Commission and the Joint Board have "consistently stated that Lifeline support is limited to a single line per residence."[38] Wireless eligible telecommunications carriers ("ETCs") are required to request certification from customers at the time of activation and on an annual basis that the customer only receives Lifeline service from that carrier. In addition, the wireless ETC is required to "establish safeguards" to prevent customers from receiving more than one Lifeline subsidy from that ETC at the same address.[39] However, a USAC audit found "a

34 / *Id.*

35 / *Id.*, at para. 46.

36 / The current Lifeline and Link Up program is designed to provide one telephone or "lifeline" per household. However, as wireless telephones become more prevalent, this becomes a challenge.

37 / *NPRM*, at para. 46.

38 / *Id.*, at para. 47.

39 / *Id.*

significant duplication rate" in two states involving two ETCs.[40] Difficulties include pre-paid wireless service whereby the consumer pays in advance and no bill is sent to a physical address.[41] Multiple carriers may seek reimbursement for the same household and be unaware that their requests are duplicative.[42]

The Commission proposes to adopt new rules and amendments to current rules that would assist in enforcement of the limitation of support to one subscription per household[43] including the creation of a "unique household identifier."[44] Rate Counsel supports such rules provided that the anticipated cost of implementing them does not exceed the projected savings.

Detection

The Commission seeks comment on the amendment of section 54.410 to require ETCs to provide names, addresses, social security numbers or other unique household identifiers to USAC on Form 497.[45] Rate Counsel is concerned with the drawback that the Commission identifies – requiring detailed information from subscribers may deter subscription.[46]

The Commission seeks comment on how ETCs can comply with requirements of the Electronic Communication Privacy Act (ECPA) and section 222 of Communications Act and

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40 / *See* USAC Independent Auditor's Report, Audit No. LI2009BE006 (December 3, 2010) "TracFone Audit" cited at *NPRM*, footnote 79.

41 / *NPRM*, at para. 51.

42 / *Id.*, at para. 50.

43 / *Id.*, at para. 54. The Commission proposes to amend section 54.400, 54.405, and 54.410 and adopt a new section 54.408. *Id.*

44 / *Id.*, at para. 56.

45 / *Id.*

46 / *Id.*

asks whether the ETC must ask the subscriber for permission to share the information.[47] If new data is collected, the Commission proposes that ETCs be required to provide data in electronic format for USAC and asks for comment on the burdens imposed by such a requirement.[48] The Commission should not hesitate to require ETCs to provide data in a format that minimizes administrative burden.

Remedies

The FCC proposes to have USAC notify providers that they must stop including subscribers in a reimbursement request when the requests are found to be duplicates. The ETC would then notify subscribers by phone or in writing (if possible) that they have 30 days to select just one provider of Lifeline service or they will be "de-enrolled."[49] The subscriber would then select one ETC, enabling the customer-selected ETC to re-submit a reimbursement request for the subscriber. This approach seems reasonable and not unduly burdensome for consumers or providers.[50]

ETCs have submitted an alternative proposal under which USAC would send a notice to a subscriber by mail with a list of ETC choices and the subscriber would be required to send the form back within 30 days.[51] Of course, under this proposal all of the duplicate ETCs would continue to submit the subscriber for reimbursement until the choice is made.[52] Although Rate Counsel does not intend to delve too much into logistics between USAC and ETCs, the

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47 / *Id.*, at para. 57.

48 / *Id.*

49 / *Id.*, at para. 58.

50 / *Id.*

51 / *Id.*, at para. 59.

52 / *Id.*

advantage to ETCs under the second proposal is clear and would improperly shift costs to those consumers who pay into the fund. The trade association plan clearly shifts all of the burdens to USAC in terms of notification and leg work. Moreover, the Commission is properly concerned that subscribers might be less likely to respond to contact from USAC "an entity they likely are unfamiliar with as opposed to their service provider."[53] Clearly, the answer to the Commission's question on whether this alternative proposal would add administrative costs for USAC[54] is yes. Therefore, Rate Counsel supports the use of the already delineated Wireline Competition Bureau guidance unless or until providers give compelling reasons demonstrating that the adoption of that guidance as part of the rules in unwarranted or unworkable.

Alternatively, the Commission also proposes yet another approach[55] that is compelling from the consumer perspective: if two ETCs are identified and if the customer responds within 30 days, the selected carrier would continue to receive reimbursement and the other carrier would be required to discontinue any reimbursement requests. If the customer does not respond to the notice from the carriers of duplicate Lifeline service, the default carrier could be the one that has been the longest continuous service provider to the customer. The other carrier would no longer receive support. This makes some sense in that if a consumer is unreachable but does require the Lifeline service, she will continue to have access to a telephone because presumably only the unreimbursed carrier will cut service off for that consumer.

The Commission seeks comment on whether consumers involved in duplicate support situations should be barred from the Lifeline program (temporary or permanently) and asks

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[53] / *Id.*

[54] / *Id.*

[55] / *Id.*, at para. 60.

whether this would be applied to the consumer or the entire household.[56] Mistakes and misunderstandings do happen and although Rate Counsel supports measures that discourage waste and fraud, the Commission should balance carefully this objective with that of encouraging consumers to enroll in the program. Some low-income households may move among apartments frequently, creating situations where someone new moves into an apartment and gets Lifeline, but the previous tenant also has Lifeline through a cell phone. The situations become complicated because of tenants changing and the mixture of wireline and wireless service. Rate Counsel urges the Commission not to establish rules that would unintentionally harm households with frequently changing residences or who may not fully understand the program rules.

The Commission seeks comments on a mechanism for carriers to reimburse the fund in the case of duplicate claims. Reimbursement is contemplated for the time that duplication is identified until the household no longer receives duplicate benefits.[57] Certainly, an incentive for providers not to knowingly provide duplicate support is important. However, the Commission should also consider a possible concern that carriers will simply drop consumers when notified of duplicate support rather than go through a process of clarification with the consumer.

Addresses

The Commission seeks comment on its proposal to require subscribers to provide a residential address to receive Lifeline service.[58] Some subscribers might receive mail at post office boxes but could also provide a residential address, and, therefore the Commission's

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[56] / *Id.*, at para. 61.

[57] / *Id.*, at para. 62.

[58] / *Id.*, at para. 63.

proposal generally is not unreasonable as a way to assist USAC and auditors in detecting duplicate service. Rate Counsel proposes, however, that the FCC also adopt various exceptions to these rules. The Commission acknowledges that circumstances may exist when the requirement for a residential address is unworkable.[59] One advantage to the growth in cell phone use and the drop in price over the past several years is that people who do not have permanent, stable living arrangements can still connect with society and can, for example, give contact information such as a telephone number to a potential employer.[60] Privacy concerns also apply in the case of a battered person, who may not wish to divulge an address. If there is no residential address available, an ETC could require the address of the social service agency, homeless shelter, or boarding house where the resident is staying.[61]

Pro Rata Reporting Requirements

The Commission should clarify its rules such that there is no question that ETCs may not claim reimbursement for an entire month from the fund when they provide service to a consumer only for a partial month.[62] The protestations of Qwest and Verizon that it is simply too burdensome to report partial-month subscription data is incredible![63] Telecommunications companies bill consumers for partial months all the time, as the Commission observes.[64] Instead, it sounds as if the carriers may be hoping to reap the benefit of "rounding" up subscription data.

[59] / *Id.*, at para. 64.

[60] / The availability and popularity of prepaid wireless options may also explain, in part, the low Lifeline participation rate. Further analysis on this point could be useful to assist the Commission with any future program modifications.

[61] / *NPRM*, at para. 64.

[62] / *Id.*, at paras. 65-66.

[63] / *Id.*, at para. 66.

[64] / *Id.*, at para. 67.

Rate Counsel supports, in no uncertain terms, the Commission's proposal to clarify its rules that ETC must report pro-rata information to USAC for reimbursement purposes.[65]

Eliminating Toll Limitation Reimbursement

The Commission proposes to eliminate the cost of providing toll limitation service (TLS) to consumers because the rules "may have outlived its usefulness, given reductions in long-distance calling rates."[66] The Commission also states that ETCs have submitted wide-ranging costs for the service: claims from $0 to $36 per month per customer![67] Rate Counsel disagrees that ETCs should no longer be required to provide the service. While toll and long distance rates have declined over the past decade, consumers – particularly low income consumers – should have the opportunity to ensure that they do not run up large toll bills. While Rate Counsel is sympathetic to the Commission's idea that the savings would be approximately $23 million which could be used for pilot programs for broadband or other Lifeline consumers, Rate Counsel instead supports the Commission's alternative proposal that it adopt a flat reimbursement amount based on incremental cost.[68] Consumers should not be penalized for the fact that ETCs are trying to over-recover funds for services with very little incremental cost.

Link Up

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65 / *Id.*

66 / *Id.*, at para. 70.

67 / *Id.*

68 / *Id.*

Tracfone filed a Petition for Declaratory Ruling with the Commission seeking a decision that ETCS are not eligible to seek reimbursement for Link Up charges unless those charges are ones that it routinely bills to non-Lifeline consumers.[69] The Commission states:

> TracFone notes that providing Link Up subsidies for activation charges that are not routinely imposed on customers violates the purpose of the Link Up program and constitutes a waste of USF funds. Several commenters agree, and suggest that the only charges eligible for Link Up reimbursement should be charges imposed on all customers, rather than charges fabricated by carriers for the purpose of receiving USF.[70]

Rate Counsel echoes these sentiments. The Commission should ensure that ETCs are not inventing charges to increase fund reimbursement. The Commission should amend its rules to define the "customary charge for commencing telecommunications service" as "the ordinary initiation charge that an ETC routinely imposes on all customers within a state."[71]

Furthermore, as noted by the Commission, in "virtually all instances" service initiation is completed remotely via software for both wireline and wireless carriers so any claimed costs should be much lower than in the past.[72] The Commission seeks comment on what current "typical" service connection charges are and whether it should reduce the cap of $30 on Link Up support.[73] Rate Counsel supports the Commission's proposal that ETCs submit for Link Up

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[69] / *Id.*, at para. 72 (cite omitted).

[70] / *Id.*

[71] / *Id.*, at para. 73. Furthermore, the FCC should take steps to prevent carriers' attempts to sidestep such a rule, by, for example, instituting a "standard" nonrecurring charge, which they then waive for their non-Lifeline customers.

[72] / *NPRM*, at para. 77.

[73] / *Id.*, at para. 78.

reimbursement to USAC and agrees that this will not be burdensome considering that ETCs are already required to maintain records regarding this issue.[74]

De-Enrollment Procedures

The Commission proposes rules that ETCs must follow to de-enroll their Lifeline customers in the following circumstances:

- The consumer has failed to select one ETC after being notified that she is receiving duplicate support;
- The consumer does not use her service for 60 consecutive days and does not confirm that she wishes to maintain service; or
- The consumer fails to respond to an eligibility verification survey.[75]

The Commission proposes that the consumer would receive notice that her service would be cut off if she did not "take action" by a specified date and seeks comment on whether the timeframe should be 60 days.[76] Rate Counsel does not agree with the non-usage de-enrollment, but does agree that 60 days is adequate notice. If consumers are genuinely defrauding the program, 60 days is enough and more would cost the program funds.

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74 / *Id.*, at para. 79.

75 / *Id.*, at para. 93.

76 / *Id.*

IV. CONSUMER ELIGIBILITY RULES

"One-Per-Residence"

The current Lifeline program and accompanying rules were conceived under different market circumstances: the intention was to support a wireline telephone in the households used by all household members. While a majority of households continue to have a wireline telephone in the home, the incidence of "wireless only" households is higher among adults living in poverty or "near" poverty.[77] Yet, as the Commission suggests, the development of wireless Lifeline services has "also made it difficult to limit low-income support to a single line per residence."[78]

Ultimately each household needs to be able to decide the way in which it can most effectively stay connected to the network. The typical situation for most households is to have wireless and wireline service. A question that the *NPRM* implies is whether low-income households should receive subsidies for similar access to wireless and wireline services. The Commission appropriately recognizes the differences in the two types of service, noting that wireless "is used on an individual basis" and wireline in shared by the household and that if households can afford it they usually have both.[79]

This seismic change in the market has led to the increased possibility that consumers will unintentionally break the one-per-household rule. However, the Commission also notes that:

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77 / See, Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January – June 2010*, released December 21, 2010, available at: http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201012.pdf, at 3.

78 / NPRM, at para. 105.

79 / *Id.*

"carrier practices of providing handsets to program participants at no cost and marketing Lifeline-supported services under different trade names increases the likelihood that a household and even a particular individual may sign up for multiple Lifeline services."[80] The Commission is seeking comment on "interpreting" the current one-per-household rule and how to account for changes in markets as well as how to deal with group living arrangements.[81]

The Commission seeks comment on several commenter proposals that Lifeline/Link Up should provide assistance to one wireless telephone per eligible adult.[82] On one hand, this would assist low-income households, but on the other hand it could "significantly increase the size of the program."[83] The FCC does not quantify the potential increase in the fund, and it is possible that the increase would pale in comparison to the savings that can be achieved by implementing long-overdue reform to the high cost fund. Regardless of the FCC's decision, it should ensure that each adult in a group living facility is eligible for support.

V. CONTROLLING THE SIZE OF THE LOW-INCOME FUND

In its efforts to control the size of the low-income fund, the FCC should keep the size of the program in context. The Lifeline and Link Up programs provide tangible, measureable benefits to consumers throughout the country. By comparison, the nation's high-cost funds are of questionable benefit (and indeed may benefit carriers more than they do customers), represent

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80 / *Id.*

81 / *Id.*, at para. 109.

82 / *Id.*, at para. 110.

83 / *Id.*

a substantial USF burden for contributing consumers and are in more dire need of reform. Nonetheless, the FCC says that low-income program grew from an inflation-adjusted $667 million in 2000 to $1.3 billion in 2010.[84] Apparently much of the increase is attributable to wireless Lifeline only ETCs, in which case, the FCC certainly should ensure that ETCs are not being over-reimbursed, and are subject to audits.

Rate Counsel is also cognizant of the fact that the cost of universal service programs is paid for by all consumers. Those consumers with incomes just above the eligibility threshold are the most vulnerable to any increases in USF fees. Nonetheless, Rate Counsel opposes a cap at this time on the Lifeline/Link Up program.[85] Adoption of many of the proposed rules regarding audits and other measures to eliminate waste and inefficiency, and an improving economy could ease demands for the fund. Also, the Commission in contemplating Lifeline support for broadband which certainly cannot be undertaken with a cap imposed.[86] A cap is premature. The Commission is making concerted efforts to reduce the cost of all universal service programs, but that also means that the Commission should be "freeing up" money to spend on important programs such as Lifeline and broadband. If, contrary to Rate Counsel's recommendation, the FCC caps the program and uses an index for increases, the FCC should take both inflation and unemployment rates into account.[87]

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[84] / *NPRM*, at para. 143. This compares to $1.7 billion just for the interstate common line support mechanism component of the high cost fund in 2010. *Id.*, at para. 142.

[85] / *Id.*, at para. 145.

[86] / *Id.*, at para. 149.

[87] / *Id.*, at para. 146.

Participation rates are low (36%[88]) – either people are eligible or not and those who have been receiving and relying on support should not be implicitly penalized because future outreach programs result in higher demand for the program. If the participation rate were at an acceptable level, then capping the program would be more prudent policy, and indeed Rate Counsel urges the Commission to analyze further the cause of the low participation rate so that the Commission can establish a reasonable goal for program participation levels. Meanwhile, reducing barriers to enrollment and capping the fund are mutually incompatible goals.

VI. PROGRAM ADMINISTRATION

The FCC seeks comment on "how to improve key aspects of the current administration of Lifeline/Link Up, consistent with our goals of reducing waste, fraud, and abuse and modernizing the program."[89] Among other things, the FCC proposes to establish a core set of requirements for eligibility, certification and verification requirements, which states could then complement.[90]

Eligibility Criteria

The Joint Board supports the adoption of uniform income and eligibility standards though it also indicated that more analysis was necessary.[91] Rate Counsel supports the adoption of the federal default program criteria as a floor and rules that allow states to adopt criteria that are

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[88] / *Id.*, at para. 228 (cite omitted).

[89] / *Id.*, at para. 150.

[90] / *Id.*

[91] / *Id.*, at para. 153.

"more permissive."[92] The more permissive criteria would increase the number of eligible consumers so it is reasonable that states that adopt more permissive criteria provide supplemental Lifeline support.[93]

Certification and Verification of Eligibility

If the Commission maintains its requirement of limiting one Lifeline account to one residence, then it should incorporate consumer acknowledgement into the consumer certification process.[94] It is important to ensure that providers are properly informing consumers of the requirement and that consumers are fully aware of the rules.

Rate Counsel supports the Commission's proposal to adopt uniform rules regarding the collection and reporting of verification data[95] as well as changes to its current sampling methodology so that survey results are statistically valid.[96]

Coordinated Enrollment

Rate Counsel welcomes measures that will facilitate the enrollment process, both for the sake of those administering the program and also to minimize the barriers to enrollment by participants. Coordinated enrollment (which allows consumers to enroll in the Lifeline and Link Up programs at the same time they enroll in a qualifying public assistance program)[97] can deter fraud because the appropriate state or Tribal agency verifies eligibility at the time of enrollment. Automatic or automated enrollment entails the enrollment of eligible consumers when they

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92 / *Id.*, at para. 154.

93 / *Id.*

94 / *Id.*, at para. 167.

95 / *Id.*, at para. 174.

96 / *Id.*, at para. 179.

97 / *Id.*, at para. 199.

subscribe to service and does not require eligible consumers to affirmatively choose to enroll.[98] This approach should minimize fraud because it relies on existing systems for determining income eligibility.

Rate Counsel welcomes measures that facilitate consumers' participation, reduce fraud, and minimize administrative burden. Rate Counsel also supports measures to protect consumers' privacy. Rate Counsel also looks forward to reviewing information from states and agencies with "front-line" experience with automatic and coordinated enrollment. With participation rates at 36%, it is important to identify barriers to enrollment and to implement procedures that facilitate eligible consumers' participation in the programs.

Database

The proposal to create a national database has merit.[99] If the Commission decides to establish such a database it should seek to minimize the lag time for enrollment, model the national database on best practices within states and as used by other low income support programs, and enable customers to migrate among suppliers. Design decisions should be informed by the cost of implementation – the anticipated savings of design decisions should exceed their cost.

VII. CONSUMER OUTREACH AND MARKETING

Rate Counsel fully supports measures to increase and to enhance consumer outreach for Lifeline and Link Up Programs. In its 2010 Recommended Decision, the Joint Board urged the

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98 / *Id.*, at para. 200.

99 / *Id.*, at paras. 205-222.

Commission to adopt requirements related to ETC outreach to consumers.[100] As noted by the Commission, only 36% of eligible consumers actually relied upon Lifeline service in 2009.[101] Although state social agencies may be best positioned to assist with outreach and marketing, their resources likely are limited and therefore the cost of outreach and marketing should be borne by carriers.[102]

Also, the FCC could consider conducting surveys of statistically significant samples of *non-participants*. Learning more about why consumers do not participate, and analyzing the survey results could assist states and the FCC in shaping outreach and marketing programs. It is unclear why consumers do not participate, and whether, for example, they are inadequately informed, are discouraged by the enrollment process, or simply have other alternatives, such as prepaid wireless plans.

VIII. MODERNIZING THE FUND

Eligible Voice Services and Support for Bundled Services

Currently, ETCs are reimbursed only for discounts provided on the price of monthly basic local service.[103] The Commission asks how it should define basic voice telephony for the purposes of the Lifeline program observing that many flat rate offerings now do not distinguish

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[100] / *Id.*, at para. 228 (cite omitted).

[101] / *Id.*

[102] / *Id.*, at paras. 232-233.

[103] / *Id.*, at para. 240.

between local, toll and long distance.[104] The Commission states: "We propose, consistent with the *USF/ICC Transformation Notice*, to amend the definition of 'Lifeline' in section 54.401 to provide support for a set of defined functionalities known as 'voice telephony service.' This amended definition may provide simplicity for ETCs who provide and advertise Lifeline services, and will ensure consistency across universal service support mechanisms."[105] The Commission also seeks comment on whether the "nine functionalities" currently supported be encompassed by that definition.[106]

Rate Counsel recommends that the Commission leave the existing definition intact, but permit Lifeline participants to apply their subsidies to bundled offerings. Rate Counsel supports the use of Lifeline funds for bundled services so that consumers who also subscribe to broadband service can purchase the best deal.[107] Carriers typically offer a substantial discount when customers purchase services together, and Lifeline customers should be able to avail themselves of such discounted rates. The FCC should prohibit carriers from limiting the use of Lifeline to basic, unbundled packages, and require providers to apply the Lifeline subsidies to bundles as well.[108] As noted by the Commission, allowing for bundled buying may make broadband more affordable for Lifeline households.[109]

"The Transition to Broadband"

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104 / *Id.*, at para. 242.

105 / *Id.*, at para. 243 (cite omitted).

106 / *Id.*, at para. 244.

107 / *Id.*, at para. 258.

108 / *Id.*, at para. 259.

109 / *Id.*, at para. 264.

The FCC's ability to pursue its broadband agenda, including any plans to expand Lifeline and Link Up programs to encompass broadband subsidies, depends critically on re-defining broadband service as the telecommunications offering that it actually is. Absent such a reclassification, the FCC's policy and decisions are vulnerable to legal challenge. With that major caveat, Rate Counsel fully supports efforts to make broadband service affordable for all consumers, including low-income households.

Consumers' ability to pay for broadband presents as much of a barrier to connectivity as does suppliers' willingness to deploy infrastructure.[110] Households with incomes greater than $75,000 are more than twice as likely to have broadband service as those with less than $20,000.[111] Rate Counsel has been a long-time proponent of promoting access to affordable broadband by low-income consumers.[112] In 2006, Rate Counsel stated, among other things:

- "If, as a nation, we seek to ensure that all segments of society have comparable access to advanced services, the Commission should broaden its investigation beyond the framework of this proceeding, which simply compares rural and urban areas. In this more broadly defined investigation, the Commission should consider not only whether rural areas have broadband access comparable to that of urban areas, but also whether all socioeconomic groups have comparable access. Furthermore, access needs to be examined not only from the perspective of whether consumers have the *option* to subscribe to broadband service (*i.e.,* is the infrastructure deployed to the consumer's neighborhood?), but also whether consumers actually *subscribe to* advanced services. The Commission presently tracks penetration rates for

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110 / *In the Matter of A National Broadband Plan for Our Future*, GN Docket No. 09-51, Rate Counsel Comments, June 8, 2009, at 31.

111 / *Id.*, at para. 266.

112 / *See, e.g., In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, September 30, 2005, at 26-27 (recommending that the Commission evaluate disparate levels of access to broadband service, *In the Matter of Consumer Protection in a Broadband Era*, WC Docket No. 05-271, Rate Counsel Initial Comments, January 17, 2006, at 15-23; Rate Counsel Reply Comments, March 1, 2006, at 13; *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Universal Service High-Cost Universal Service Support*, WC Docket No. 05-337, Rate Counsel Reply Comments, June 2, 2008, at 10-12.

basic telephone service. The Commission similarly should measure and track penetration rates for broadband service."[113]

- "Any attempts by the Commission to narrow the digital divide should address not only high cost areas, but also low-income communities."[114]
- "The Lifeline income eligibility is low and so would not address income constraints of the working poor, those on minimum wage, and others with little or no disposable income. For this reason, the Commission may need to explore other ways to target broadband support to a larger segment of the population. To promote technology neutrality (*i.e.*, not favoring one provider over another), the support should be fully portable. To promote administrative efficiency, an existing income verification program would be desirable." [115]

In November 2008, Rate Counsel stated:

> "The proposed pilot program to subsidize broadband adoption through the Lifeline and Link Up programs is a step in the right direction, but the level of proposed funding is inadequate to the magnitude of the task. Furthermore, in today's economic downturn, there are likely many households that may not qualify for Lifeline, but that nonetheless confront severe budget constraints. Affordable broadband is essential not only for Lifeline customers, but for all households."[116]
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> "Rate Counsel previously recommended that the Commission impose USF fees on all broadband services (whether offered by telecommunications or cable companies) 'for the purpose of generating funds to support broadband deployment to underserved populations (*e.g.*, where income constraints discourage broadband demand, and, therefore, where Lifeline subsidies are warranted) and unserved areas (*e.g.*, in rural, high-cost areas where such deployment has not already been funded through the rural high cost fund or as a result of regulatory bartering with state commissions).' More specifically, Rate Counsel estimated that a 1% charge

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113 / *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Universal Service High-Cost Universal Service Support*, WC Docket No. 05-337, Rate Counsel Initial Comments, March 27, 2006, at 21 (emphasis in original).

114 / *Id.*, at 23.

115 / *Id.*

116 / *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92, WC Docket Nos. 03-109, 04-36, 05-337, 06-122, Order on Remand and Report and Order ("Report and Order") and Further Notice of Proposed Rulemaking ("FNPRM"), FCC 08-262 (rel. Nov. 5, 2008), Rate Counsel Initial Comments, November 26, 2008, at 50-51.

on current broadband customers would yield approximately $400 million per year – funds that could supplement the $300 million per year of the Pilot Program."[117]

Accordingly, based on its long-time and continuing support for addressing the income barrier to broadband adoption, Rate Counsel fully supports the FCC's proposed efforts to expand Lifeline/Link Up programs to encompass broadband service.[118] As the excerpts above discuss, however, affordable broadband service should be available to all consumers.

The FCC should amend the definition of Lifeline to explicitly allow support for broadband service[119] Furthermore, Rate Counsel supports the FCC's proposal for a pilot program[120] and its proposal "to fund a series of projects that would test different approaches to providing support for broadband to low-income consumers across different geographic areas."[121] The FCC seeks comment on the level of funding that would be necessary to support the pilot program and seeks comment on possible funding sources.[122] As is discussed above, in 2008,

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117 / *Id.*, at 57, citing *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337, Reply Comments of the New Jersey Division of Rate Counsel, June 2, 2008, at 3, 23-24 and 37-38.

118 / Rate Counsel also commends the FCC for incorporating commitments for broadband subsidies for low-income households in recent merger transactions. As a voluntary commitment in its recent transaction involving NBC Universal, Inc., Comcast Corporation agreed to make broadband available to low-income households for less than $10 per month, and making personal computers, netbooks, and other computer equipment available at a purchase price below $150. *See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc.; For Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, Memorandum Opinion and Order, FCC 11-4, rel. Jan. 18, 2011, at para. 233. CenturyLink committed to launch a major broadband adoption program focusing on connecting low-income consumers in its 37-state territory, to offer qualifying households broadband at less than $10 per month and a computer for less than $150. In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licenses; MB Docket No. 10-56, Memorandum Opinion and Order, FCC 11-47, rel. March 18, 2011, at 27-29.

119 / *Id.*, at para. 275.

120 / *Id.*, at paras. 279-302.

121 / *Id.*, at para. 280.

122 / *Id.*, at paras. 287-288.

Rate Counsel estimated that a 1% charge on then-current broadband customers would yield approximately $400 million per year. With continuing growth in demand for broadband services, a charge on broadband customers in 2011 likely would yield a higher level of annual funds to support a broadband pilot program. CenturyLink and Comcast are already subsidizing broadband services for low-income customers. It is entirely appropriate for *all* broadband providers to follow suit. A cohesive national policy to subsidize broadband adoption for low-income households should replace the fragmented approach that now exists.

The FCC should partner with states in the development and implementation of any pilot program that integrates broadband service into the low-income program.[123] States are uniquely positioned to identify target populations, and to integrate administration, outreach, and support into existing programs. Program participants should be encouraged to partner with existing low-income community groups and organizations so as to build off of mechanisms that exist already for delivering housing, food, and utility assistance to low-income households. States should be encouraged, in their proposals, to designate those organizations best equipped to administer the program. Rate Counsel supports an evaluation of the pilot programs,[124] but is concerned that the entire process (establishing a pilot program, administering the program, and evaluating the pilot programs) could delay unduly the goal of ensuring that all low-income households, *regardless of whether they are able to participate in a pilot program*, receive Lifeline/Link Up subsidies for broadband service. With each passing year, low-income households are getting left further and further behind. Several years ago, a pilot program would have been better timed. Therefore,

[123] / *Id.*, at para. 291.

[124] / *Id.*, at para. 297.

Rate Counsel supports a pilot program but only if it occurs on an expedited schedule, and furthermore has some grave misgivings that a pilot program could end up delaying nationwide assistance to low-income households.

The FCC should consider seeking "best-practices" information from CenturyLink and from Comcast on the broadband low-income programs they are now implementing so that states, the FCC, and other providers can benefit from their experiences and shape the establishment of similar programs accordingly. Rate Counsel urges the FCC, in partnership with states, to serve as a national clearinghouse of best practices for broadband adoption.

Rate Counsel supports the FCC's proposal to delegate authority to the Wireline Competition Bureau to select pilot participants and take other necessary steps to implement the proposed program,[125] but urges the Wireline Competition Bureau to establish an advisory group including representatives of low-income organizations as well as of states.

IX. CONCLUSION

Rate Counsel appreciates the FCC's comprehensive and thorough vetting of the numerous detailed issues relating to the efficient and effective administration of the Lifeline and Link Up programs, but urges the FCC to move forward expeditiously with actual proposed rules. For many of the issues, there is no "perfect" answer, and therefore the FCC should simply apply its predictive judgment to modify the programs accordingly. Furthermore, although Rate Counsel fully supports the FCC's efforts to ensure that

125 / *Id.*, at para. 299.

broadband service is affordable for all consumers, clearly broadband needs to be redefined as the telecommunications service that it actually is so that the FCC can avoid legal pitfalls as it seeks to implement its broadband agenda. Rate Counsel welcomes the opportunity to submit comment on the FCC's proposed changes to the Lifeline and Link Up Programs, and requests that the FCC consider Rate Counsel's recommendations set forth in these initial comments.

Respectfully submitted,

Stefanie A. Brand
Director
Division of Rate Counsel

Christopher J. White
Deputy Public Advocate
P.O. Box 46005
Newark, NJ 07101
Phone (973) 648-2690
Fax (973) 624-1047
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

Economic Consultants:
Susan M. Baldwin
Sarah M. Bosley

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